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January 8, 2015

VIA ECF

Honorable Charles R. Breyer, U.S.D.J
United States District Court-Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

**Re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices,
and Products Liability Litigation*, MDL No 2672 CRB (JSC)**

Dear Judge Breyer:

Our firm, Nagel Rice, LLP ("NR") represents 42 plaintiffs in 19 different states and 1 other country in the above-referenced matter.¹ The following constitutes our application for appointment of Diane E. Sammons and NR as Lead Counsel or alternatively, as members of Plaintiffs' Steering Committee representing Vehicle Owners. (Criteria #7 in the Court's Pretrial Order No. 2) (DE #336). *We are uniquely qualified for a leadership role in this case given our: a) unique distinction of leading consumer class actions for defective products including automobiles, trains, washing machines, refrigerators and bank service products; b) trying hundreds of cases to verdict; c) prosecuting the most cutting edge cases in the country including the landmark consumer fraud case in the New Jersey Supreme Court which defined the cause of action and obtaining one of the largest consumer fraud judgments in N.J. history; d) wealth of experience in leading complex class actions against international companies in litigations having significant world-wide political and financial implications with specific expertise in prosecuting claims against German companies; e) our unwavering commitment to prioritizing our clients above all else; and f) the character and commitment of our lead class representative who has garnered international attention and interest as the face of this litigation.* We address the remaining criteria contained in this Court's Pretrial Order No. 2 (DE# 336).

(1) and (2) Professional Experience in This Type of Litigation (including MDL/Contact Information with Judges)

¹ Nagel Rice, LLP filed the first case venued in New Jersey and one of the earliest filed cases nationwide.

Our firm highlights include our recent filing of a nationwide class action against *Jaguar Land Rover North America, LLC* for an inherent defect in the "Infotainment Control Module" contained in their 2008-2015 LR2s, which causes the batteries to drain; co-lead counsel in a nationwide class action in *Electrolux Home Products Ice Maker Cases*, involving defective ice-makers impacting tens of thousands of consumers, resulting in a \$20 million settlement (pending); being appointed co-lead counsel in two separate MDL lawsuits, *In re: Discover Card Payment Protection Plan Marketing and Sales Practices Litigation*, and *Esslinger, et al. v. HSBC Bank Nevada, N.A. et als.*, on behalf of tens of millions of consumers against banks for their improper marketing of consumer protection plans resulting in a total of \$34 million in settlements; serving as lead counsel in a class action, *Drazin v. Horizon Blue Cross-Blue Shield of New Jersey*, relating to coverage of eating disorders as biologically based mental illnesses under the New Jersey Mental Health Parity Act resulting in a \$19 million in settlement and affecting 1.5 million insureds; co-lead counsel in MDL certified product liability class action, *In re Ski Train Fire in Kaprun, Austria*, involving the death of 153 individuals in a ski train fire in Kaprun, Austria against German and Austrian companies that resulted in over \$16 million recovered on behalf of the American plaintiffs; court appointed lead counsel in landmark MDL reparations case, *In re African American Slave Descendants' Litig.*, on behalf of a putative class of 60 million African American Slave Descendants resulting in three published decisions including a reversal by the 7th Circuit Court of Appeals; one of the lead attorneys in an 11 year litigation, *In re: South African Apartheid Litigation*, brought on behalf of victims of apartheid in South Africa under the Alien Tort Statute against corporations (including numerous car manufacturers) who violated *jus cogen* standards of international law. Our efforts reveal a commitment to cases that promote important justice goals which, at their outset, may signal little or no likelihood for legal fees. Hence, in the *Apartheid Litigation*, where there was a settlement with GM, all counsel waived their earned fees to provide more compensation to the plaintiffs. A complete listing of all relevant cases including the name of the Presiding Judge and contact information (Criteria #2) is contained on the Resume attached as Exhibit A hereto.

(3), (5), and (6) Willingness, Ability, to Commit Time and Financial Resources to this Litigation and the Ability to Work Cooperatively with Other Attorneys.

NR has the resources to commit a substantial amount of its daily time to this litigation. On November 23, 2015, Jay Rice, a Partner, was a featured speaker on the unique challenges of litigating against German corporate entities in a legal seminar in San Francisco (Bridgeport's Volkswagen Class Action & MDL Seminar). Moreover, we have attached as Exhibit B the names of 9 firms that support us and will commit resources towards our efforts. Our ability and willingness to invest the time and financial resources to support this litigation are evinced by the sheer scope, time commitment and financial resources we have brought to bear in our prior cases including: a) the Kaprun ski train case which extended over 7 years and required coordination among attorneys from Germany, Austria, Japan and Holland; involved scores of trips to Europe (Germany and Austria) for discovery purposes; conducting depositions in Germany of corporate representatives (through translators) of multiple German and Austrian companies including Siemens AG and Bosch-Rexroth AG; updating foreign clients and local counsel on progress on the case; monitoring and providing input into the local criminal investigation; interfacing with non-governmental agencies, local, state and country governmental officials; and securing the services and reports of multiple product liability experts allowing us to develop unique expertise in litigation against German corporations, which will be a crucial part of this class action; b) the continuing eleven year apartheid litigation, where counsel have made numerous trips to South Africa to confer with clients and local counsel; conducted thousands of hours of investigatory discovery; coordinated meetings with governmental officials in Washington and Johannesburg, participated in research and academic conferences regarding the case; met with world leaders including Nelson Mandela and Archbishop Desmond Tutu to garner support for the litigation and conducted closed door negotiations

with labor unions and other interested parties including foreign dignitaries; c) the Debt Protection cases which NR led that involved the investigation, discovery, mediation and relatively prompt settlement of the claims of millions of consumers. In this case, NR bore its proportional share of all costs involved in the investigation of the claims, the hiring of experts including a damage expert, conducting confirmatory discovery, the coordination of multiple mediations and the full implementation of the settlement process including final distribution.

(8) Other Considerations Include Our Reputation for Involving our Clients and Co-counsel in All Decisions; the Quality and Commitment of our Representative Plaintiffs; Our Dogged Commitment to Seek the Best Outcomes for our Clients and our Support for Diversity within our Firm, our Co-counsel Groups and the Cases we Support.

In the instant case, we have been approached by highly motivated and sophisticated clients, who sought us out because of our reputation as leaders in the class action bar. Our lead class representative, Ari Levin, would be the ideal face for this litigation. A software engineer by trade and committed to environmental consciousness, he purchased his vehicle in California specifically because of representations of the engine's clean quality coupled with promises of good gas mileage, superior torque and acceleration. Since our filing of the first New Jersey case on September 21, 2015, he has been deluged with interview requests and has responded passionately, consistently and articulately to all inquiries; appearing in articles and interviews by national and international press, including appearing on a special segment of *Good Morning America*.² Germany's largest paper, *Bild*, has done numerous articles interviewing Mr. Levin over the course of the litigation, while *Swiss National TV* and *Eco Media German TV* have also featured him prominently as the face of the litigation. It is critical that this case be led by counsel who fully understand the need for transparency; exhibit a strong commitment to serve as unwavering advocates for consumers who were significantly harmed by the unscrupulous behavior of the defendants, and who have significant experience and trust among the bar to conduct themselves in the highest ethical manner. This includes being inclusive and fair in conduct with our fellow colleagues and exhibiting the experience, organization skill and resources to lead this action to a prompt and satisfactory resolution while ensuring ongoing opportunity for input from representative plaintiffs and their attorneys.

Finally, NR is in the unique position of having Diane E. Sammons, with significant class action experience who expertly guide this class action. Placing women in leadership positions will assist remediating the observation made by Judge Sarah S. Vance at the MDL hearing in New Orleans as to the paucity of diversity among the bar present that day. Moreover, NR's commitment to diversity in its representation of clients over the years attests to its commitment to incorporate a diverse outlook to leadership as well as in its approach to assure the most diverse outlooks of our consumers are protected and considered in moving this case forward toward a successful resolution.

Very truly yours,

NAGEL RICE, LLP

/s/ Diane E. Sammons
DIANE E. SAMMONS

DES: jb

² <http://www.gainesville.com/article/20151001/ARTICLES/151009976/0/search?p=1&tc=pg;>
[http://www.buzzfeed.com/leticiamiranda/volkswagen-car-owners-file-lawsuits-over-emissions-recall?utm_term=.qbAgMBRn1#.cm2Q590ng;](http://www.buzzfeed.com/leticiamiranda/volkswagen-car-owners-file-lawsuits-over-emissions-recall?utm_term=.qbAgMBRn1#.cm2Q590ng) [http://abcnews.go.com/Business/ny-man-sues-volkswagen-emissions-scandal-reason-bought/story?id=33951902;](http://abcnews.go.com/Business/ny-man-sues-volkswagen-emissions-scandal-reason-bought/story?id=33951902) <http://www.nbcnewyork.com/video/#!/on-air/as-seen-on/NY-Volkswagen-Owner-Sues-in-Emissions-Scandal/328731771>